

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MAY 15 10 51 AM '92

MM Docket No. 92-107✓

DISPATCHED

In re Applications of

BIBLE BROADCASTING File No. BPED-900816MA
NETWORK, INC.
(hereafter "Broadcasting")
Fort Smith, Arkansas
Channel 209A

NATIONAL CHRISTIAN File No. BPED-900823MA
NETWORK, INC.
(hereafter "National")
Fayetteville, Arkansas
Channel 207C2

For Construction Permit for a New
Noncommercial Educational FM Station

HEARING DESIGNATION ORDER

Adopted: May 5, 1992;

Released: May 14, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new noncommercial FM station.

2. *Directional Antenna.* Engineering analysis of National's application reveals that National proposes to locate its antenna above the licensed directional antenna operations of KUAF(FM), Fayetteville, Arkansas, which are located on the same tower. There exists a possibility that the transmission line, which must pass through the aperture of KUAF(FM)'s antenna, may disrupt KUAF(FM)'s licensed directional antenna pattern. Accordingly, National must submit an amendment either containing a statement from Dielectric Corporation (the manufacturer of KUAF(FM)'s directional antenna, Type No. DCR-G4) stating that the transmission line will not affect KUAF(FM)'s directional antenna or else relocating the antenna to a place on the tower which would eliminate any adverse effects to KUAF(FM)'s directional antenna. This response must be submitted to the Administrative Law Judge within 30 days of the release of this *Order*.

3. *Environmental.* Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Broadcasting and National did not address the matter of how they would protect workers on their respective towers from RF radiation exposure. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Broadcasting and National may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163,

51 Fed. Reg. 14999 (April 12, 1986). See also *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 27, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceeding specific standards. Since Broadcasting and National failed to indicate how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally OST Bulletin No. 65, *supra*, at 28. Accordingly, Broadcasting and National will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. See 47 C.F.R. § 1.1308(d).

4. *Share-time Arrangement.* Neither of the applicants has indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement among themselves.

5. *Contingent Comparative Issue.* The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

6. *Areas and Populations.* Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities,

the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available non-commercial educational FM signals within the respective service areas.

7. *Late-filed Amendments.* Broadcasting petitioned for leave to amend its application on July 22, August 26, October 9, November 7, December 20, 1991, and January 17 and April 7, 1992. The accompanying amendments were filed after July 2, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

8. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Broadcasting and National in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1.1319.

2. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That National shall file the amendment specified in Paragraph 2 above with the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED, That in accordance with paragraph 3 hereinabove, Broadcasting and National shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Broadcasting ARE GRANTED, and the corresponding amendments (7/22, 8/26, 10/09, 11/07, 12/20/1991, and 1/17 and 4/7/92) ARE ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau